

105TH CONGRESS
1ST SESSION

H. R. 1835

To provide a more just and uniform procedure for Federal civil forfeitures.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1997

Mr. HYDE (for himself, Mr. McDERMOTT, Mrs. KELLY, Mr. HAYWORTH, Mr. STARK, Ms. DEGETTE, Ms. JACKSON-LEE of Texas, Mr. CONYERS, Mr. FRANK of Massachusetts, Mr. BARR of Georgia, Mrs. MEEK of Florida, Mr. MARTINEZ, Ms. LOFGREN, Mr. WICKER, Mr. GRAHAM, Mr. MANZULLO, Mr. SCHIFF, Mr. CLAY, Mr. EVANS, Mr. FOLEY, Mr. FOGLIETTA, Mr. PARKER, Mr. DELLUMS, Mr. BLILEY, Mr. BROWN of Ohio, Mr. WATT of North Carolina, Mr. BERMAN, Mr. BAKER, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide a more just and uniform procedure for Federal civil forfeitures.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Asset Forfeiture
5 Reform Act”.

1 **SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL**
2 **FORFEITURE PROCEEDINGS.**

3 Section 981 of title 18, United States Code, is
4 amended—

5 (1) by inserting after subsection (i) the follow-
6 ing:

7 “(j)(1)(A) In any nonjudicial civil forfeiture proceed-
8 ing under a civil forfeiture statute, with respect to which
9 the agency conducting a seizure of property must give
10 written notice to interested parties, such notice shall be
11 given as soon as practicable and in no case more than 60
12 days after the later of the date of the seizure or the date
13 the identity of the interested party is first known or dis-
14 covered by the agency, except that the court may extend
15 the period for filing a notice for good cause shown.

16 “(B) A person entitled to written notice in such pro-
17 ceeding to whom written notice is not given may on motion
18 void the forfeiture with respect to that person’s interest
19 in the property, unless the agency shows—

20 “(i) good cause for the failure to give notice to
21 that person; or

22 “(ii) that the person otherwise had actual notice
23 of the seizure.

24 “(C) If the government does not provide notice of a
25 seizure of property in accordance with subparagraph (A),

1 it shall return the property and may not take any further
2 action to effect the forfeiture of such property.

3 “(2)(A) Any person claiming such seized property
4 may file a claim with the appropriate official after the sei-
5 zure.

6 “(B) A claim under subparagraph (A) may not be
7 filed later than 30 days after—

8 “(i) the date of final publication of notice of
9 seizure; or

10 “(ii) in the case of a person entitled to written
11 notice, the date that notice is given.

12 “(C) The claim shall state the claimant’s interest in
13 the property.

14 “(D) Not later than 90 days after a claim has been
15 filed, the Attorney General shall file a complaint for for-
16 feiture in the appropriate court or return the property,
17 except that a court in the district in which the complaint
18 will be filed may extend the period for filing a complaint
19 for good cause shown or upon agreement of the parties.

20 “(E) If the government does not file a complaint for
21 forfeiture of property in accordance with subparagraph
22 (D), it shall return the property and may not take any
23 further action to effect the forfeiture of such property.

24 “(3)(A) If the person filing a claim is financially un-
25 able to obtain representation by counsel, the court may

1 appoint counsel to represent that person with respect to
2 the claim.

3 “(B) In determining whether to appoint counsel to
4 represent the person filing the claim, the court shall take
5 into account—

6 “(i) the nature and value of the property sub-
7 ject to forfeiture, including the hardship to the
8 claimant from the loss of the property seized, com-
9 pared to the expense of appointing counsel;

10 “(ii) the claimant’s standing to contest the for-
11 feiture; and

12 “(iii) whether the claim appears to be made in
13 good faith or to be frivolous.

14 “(C) The court shall set the compensation for that
15 representation, which shall—

16 “(i) be equivalent to that provided for court-ap-
17 pointed representation under section 3006A of this
18 title, and

19 “(ii) be paid from the Justice Assets Forfeiture
20 Fund established under section 524 of title 28, or in
21 a case under the jurisdiction of the Treasury De-
22 partment, from the Customs Forfeiture Fund estab-
23 lished under section 613A of the Tariff Act of 1930.

24 “(4) In all suits or actions (other than those arising
25 under section 592 of the Tariff Act of 1930) brought for

1 the civil forfeiture of any property, the burden of proof
2 is on the United States Government to establish, by clear
3 and convincing evidence, that the property is subject to
4 forfeiture.

5 “(5)(A) An innocent owner’s interest in property
6 shall not be forfeited under any civil forfeiture statute.

7 “(B) With respect to a property interest in existence
8 at the time the illegal conduct giving rise to forfeiture took
9 place, the term ‘innocent owner’ means an owner who—
10 “(i) did not know of the conduct giving rise to
11 forfeiture; or

12 “(ii) upon learning of the conduct giving rise to
13 the forfeiture, did all that reasonably could be ex-
14 pected under the circumstances to terminate such
15 use of the property.

16 “(C) With respect to a property interest acquired
17 after the conduct giving rise to forfeiture has taken place,
18 the term ‘innocent owner’ means a person who, at the time
19 that person acquired the interest in the property, did not
20 know—

21 “(i)(I) of the conduct giving rise to the forfeit-
22 ure; and

23 “(II) that the property was involved in, or the
24 proceeds of, that conduct; or

1 “(ii) that the Government was seeking forfeit-
2 ure of that property.

3 “(6) For the purposes of paragraph (5) of this sub-
4 section—

5 “(A) a person may show that such person did
6 all that reasonably can be expected, among other
7 ways, by demonstrating that such person, to the ex-
8 tent permitted by law—

9 “(i) gave timely notice to an appropriate
10 law enforcement agency of information that led
11 the person to know the conduct giving rise to
12 a forfeiture would occur or has occurred; and

13 “(ii) in a timely fashion revoked permission
14 for those engaging in such conduct to use the
15 property or took reasonable actions in consulta-
16 tion with a law enforcement agency to discour-
17 age or prevent the illegal use of the property;
18 and

19 “(B) in order to do all that can reasonably be
20 expected, a person is not required to take steps that
21 the person reasonably believes would be likely to
22 subject the person to physical danger.

23 “(7) As used in this section, the term ‘civil forfeiture
24 statute’ means any provision of Federal law providing for

1 the forfeiture of property other than as a sentence imposed
2 upon conviction of a criminal offense.

3 “(k)(1) A claimant under subsection (j) is entitled to
4 immediate release of seized property if—

5 “(A) the claimant has a possessory interest in
6 the property;

7 “(B) the continued possession by the United
8 States Government pending the final disposition of
9 forfeiture proceedings will cause substantial hard-
10 ship to the claimant, such as preventing the func-
11 tioning of a business, preventing an individual from
12 working, or leaving an individual homeless; and

13 “(C) the claimant’s likely hardship from the
14 continued possession by the United States Govern-
15 ment of the seized property outweighs the risk that
16 the property will be destroyed, damaged, lost, con-
17 cealed, or transferred if it is returned to the claim-
18 ant during the pendency of the proceeding.

19 “(2) A claimant seeking release of property under
20 this subsection must request possession of the property
21 from the appropriate official, and the request must set
22 forth the basis on which the requirements of paragraph
23 (1) are met.

24 “(3) If within 10 days after the date of the request
25 the property has not been released, the claimant may file

1 a motion or complaint in any district court that would
2 have jurisdiction of forfeiture proceedings relating to the
3 property setting forth—

4 “(A) the basis on which the requirements of
5 paragraph (1) are met; and

6 “(B) the steps the claimant has taken to secure
7 release of the property from the appropriate official.

8 “(4) If a motion or complaint is filed under para-
9 graph (3), the district court shall order that the property
10 be returned to the claimant, pending completion of pro-
11 ceedings by the United States Government to obtain for-
12 feiture of the property, if the claimant shows that the re-
13 quirements of paragraph (1) have been met. The court
14 may place such conditions on release of the property as
15 it finds are appropriate to preserve the availability of the
16 property or its equivalent for forfeiture.

17 “(5) The district court shall render a decision on a
18 motion or complaint filed under paragraph (3) no later
19 than 30 days after the date of the filing, unless such 30-
20 day limitation is extended by consent of the parties or by
21 the court for good cause shown.”; and

22 (2) by redesignating existing subsection (j) as
23 subsection (l).

1 **SEC. 3. CONFORMING AMENDMENTS TO TITLE 28, TO**
2 **RULES OF PROCEDURE, AND TO THE CON-**
3 **TROLLED SUBSTANCES ACT.**

4 (a) USE OF ASSETS FORFEITURE FUND FOR ATTOR-
5 NEY FEES.—Section 524(c) of title 28, United States
6 Code, is amended—

7 (1) by striking out “law enforcement pur-
8 poses—” in the matter preceding subparagraph (A)
9 in paragraph (1) and inserting “purposes—”;

10 (2) by redesignating the final 3 subparagraphs
11 in paragraph (1) as subparagraphs (J), (K), and
12 (L), respectively;

13 (3) by inserting after subparagraph (G) of
14 paragraph (1) the following new subparagraph:

15 “(H) payment of court-awarded compensation
16 for representation of claimants pursuant to section
17 981 of title 18;

18 “(I) payment of compensation for damages to
19 property under section 5(b) of the Civil Asset For-
20 feiture Reform Act;”; and

21 (4) by striking out “(H)” in subparagraph (A)
22 of paragraph (9) and inserting “(I)”.

23 (b) IN REM PROCEEDINGS.—Paragraph (6) of Rule
24 C of the Supplemental Rules for Certain Admiralty and
25 Maritime Claims to the Federal Rules of Civil Procedure

1 (28 U.S.C. Appendix) is amended by striking “10 days”
2 and inserting “30 days”.

3 (c) CONTROLLED SUBSTANCES ACT.—Section 518 of
4 the Controlled Substances Act (21 U.S.C. 888) is re-
5 pealed.

6 **SEC. 4. CONFORMING AMENDMENTS TO REVENUE LAWS.**

7 (a) IN GENERAL.—Section 615 of the Tariff Act of
8 1930 (19 U.S.C. 1615) is amended to read as follows:

9 **“SEC. 615. APPLICATION OF TITLE 18, UNITED STATES**
10 **CODE TO FORFEITURE PROCEEDINGS.**

11 “Those portions of section 981 of title 18, United
12 States Code, that apply generally to civil forfeiture proce-
13 dures apply also to any civil forfeiture proceeding relating
14 to the condemnation or forfeiture of property for violation
15 of the customs laws.”.

16 (b) CONFORMING REPEAL.—Section 608 of the Tar-
17 iff Act of 1930 (19 U.S.C. 1608) is repealed.

18 (c) TIME FOR FILING CLAIMS.—Section 609(a) of
19 the Tariff Act of 1930 (19 U.S.C. 1609) is amended—

20 (1) by striking “twenty” and inserting “30”;
21 and

22 (2) by striking “or bond”.

23 (d) TREASURY ASSET FORFEITURE FUND.—Section
24 613A(a)(3) of the Tariff Act of 1930 (19 U.S.C.
25 1613b(a)(3)) is amended—

1 (1) by striking “and” at the end of subpara-
2 graph (E);

3 (2) by striking the period at the end of sub-
4 paragraph (F) and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(G) payment of court-awarded compensation
7 for representation of claimants pursuant to section
8 981 of title 18, United States Code.”.

9 (e) FORFEITURE OF PERSONAL PROPERTY.—Section
10 7325 of the Internal Revenue Code of 1986 is amended—

11 (1) in paragraph (2), by striking “for 3 weeks”
12 through “such notice” and inserting “in accordance
13 with section 981(j)(1) of title 18, United States
14 Code”;

15 (2) in paragraph (3), by amending the head to
16 read “Filing of claim” and by striking “stating his
17 interest in the articles seized” through “description
18 of the goods seized,” and inserting “stating such
19 person’s interest in the articles seized. Such person
20 shall transmit a duplicate list or description of the
21 goods seized”; and

22 (3) in paragraph (4), by amending the heading
23 to read “Sale” and by striking “and no bond is
24 given within the time above specified”.

1 **SEC. 5. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
2 **ERTY.**

3 (a) TORT CLAIMS ACT.—Section 2680(c) of title 28,
4 United States Code, is amended—

5 (1) by striking “law-enforcement” and inserting
6 “law enforcement”; and

7 (2) by inserting before the period the following:
8 “, except that the provisions of this chapter and sec-
9 tion 1346(b) of this title do apply to any claim based
10 on the negligent destruction, injury, or loss of goods,
11 merchandise, or other property, while in the posses-
12 sion of any officer of customs or excise or any other
13 law enforcement officer, if the property was seized
14 for the purpose of forfeiture but the interest of the
15 claimant is not forfeited”.

16 (b) DEPARTMENT OF JUSTICE.—

17 (1) IN GENERAL.—With respect to a claim that
18 cannot be settled under chapter 171 of title 28,
19 United States Code, the Attorney General may set-
20 tle, for not more than \$50,000 in any case, a claim
21 for damage to, or loss of, privately owned property
22 caused by an investigative or law enforcement officer
23 (as defined in section 2680(h) of title 28, United
24 States Code) who is employed by the Department of
25 Justice acting within the scope of his or her employ-
26 ment.

1 (2) LIMITATIONS.—The Attorney General may
2 not pay a claim under paragraph (1) that—

3 (A) is presented to the Attorney General
4 more than 1 year after it occurs; or

5 (B) is presented by an officer or employee
6 of the United States Government and arose
7 within the scope of employment.

8 **SEC. 6. PREJUDGMENT AND POSTJUDGMENT INTEREST.**

9 Section 2465 of title 28, United States Code, is
10 amended—

11 (1) by inserting “(a)” before “Upon”; and

12 (2) adding at the end the following:

13 “(b) INTEREST.—

14 “(1) POST-JUDGMENT.—Upon entry of judg-
15 ment for the claimant in any proceeding to condemn
16 or forfeit property seized or arrested under any Act
17 of Congress, the United States shall be liable for
18 post-judgment interest as set forth in section 1961
19 of this title.

20 “(2) PRE-JUDGMENT.—The United States shall
21 not be liable for prejudgment interest, except that in
22 cases involving currency, other negotiable instru-
23 ments, or the proceeds of an interlocutory sale, the
24 United States shall disgorge to the claimant any
25 funds representing—

1 “(A) interest actually paid to the United
2 States from the date of seizure or arrest of the
3 property that resulted from the investment of
4 the property in an interest-bearing account or
5 instrument; and

6 “(B) for any period during which no inter-
7 est is actually paid, an imputed amount of in-
8 terest that such currency, instruments, or pro-
9 ceeds would have earned at the rate described
10 in section 1961.

11 “(3) LIMITATION ON OTHER PAYMENTS.—The
12 United States shall not be required to disgorge the
13 value of any intangible benefits nor make any other
14 payments to the claimant not specifically authorized
15 by this subsection.”.

16 **SEC. 7. APPLICABILITY.**

17 (a) IN GENERAL.—Unless otherwise specified in this
18 Act, the amendments made by this Act apply with respect
19 to claims, suits, and actions filed on or after the date of
20 the enactment of this Act.

21 (b) EXCEPTIONS.—

22 (1) The standard for the required burden of
23 proof set forth in section 981 of title 18, United
24 States Code, as amended by section 2, shall apply in

1 cases pending on the date of the enactment of this
2 Act.

3 (2) The amendment made by section 6 shall
4 apply to any judgment entered after the date of en-
5 actment of this Act.

○